Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-In-Billing and	)	
Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility	)	
Consumer Advocates' Petition for	)	
Declaratory Ruling Regarding Monthly	)	
Line Items and Surcharges Imposed	)	
By Telecommunications Carriers	)	CG Docket No. 04-208

COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications Inc. ("SBC") hereby submits these comments in response to the Second Further Notice of Proposed Rulemaking ("*Second Further Notice*") in the above-referenced proceeding.

I. BACKGROUND AND SUMMARY

The Commission in 1999 adopted binding billing principles to ensure that consumers receive telephone bills that are "thorough, accurate, and understandable."[1] Specifically, the Commission required the following:

- That consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new provider;
- That consumer telephone bills contain full and non-misleading descriptions of charges that appear therein; and
- That consumer telephone bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.

[1] *Truth-In-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶40 (1999) ("*TIB Order*").

The Commission afforded carriers considerable discretion in implementing these principles, correctly reasoning that carriers are in the best position to determine how to do so in a manner that suits their business and customers' needs.[2] Broad principles, the Commission determined, would allow carriers the opportunity to minimize their costs and creatively differentiate themselves from others through customer-friendly bills.[3] The Commission, however, was emphatic that it would not hesitate to use its enforcement authority should carriers disregard the adopted principles.

While carriers were given wide latitude with respect to billing format, billing descriptions, and the use of line items, the Commission determined that carriers should use standardized labels for line-item charges associated with federal regulatory action. The Commission was concerned that carriers could lead consumers erroneously to believe that certain line-item charges are federally mandated, thereby curbing a consumer's desire to engage in comparative shopping.[4] Rather than impose standardized labels at that time, the Commission initiated a *Further Notice*,[5] and therein proposed and sought industry comment on specific labels. Specifically, the Commission asked:

(1) whether its proposed standardized labels would (a) adequately identify the charges, and (b) provide consumers with a basis for comparison among carriers, while ensuring that the description is succinct;

(2) whether there are other labels the Commission should adopt for line items that are more appropriate; and

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[2] *TIB Order* ¶6.

[3] *TIB Order* ¶10.

[4] *TIB Order* ¶54.

[5] *Truth-In-Billing and Billing Format,* Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492,¶ 40 (1999) ("*Further Notice*").

(3) how carriers should identify line items that combine two or more charges into a lump sum.[6]

The Commission never concluded that proceeding. Thus, over the past six years, the industry has employed a number of labels to describe line-item charges associated with federal regulatory action.

In 2004, NASUCA filed a Petition for Declaratory Rulemaking,[7] raising many of the issues already teed up in the Commission's *Further Notice*. Specifically, NASUCA raised concerns about carriers' use of line-item charges, and specifically asked the Commission to declare that carriers are precluded under the existing truth-in-billing ("TIB") rules from imposing line-item charges unless they are expressly mandated by a governmental entity.[8] The Commission appropriately rejected NASUCA's Petition this year, finding that its current rules do not prohibit the use of line-item charges, whether mandated or non-mandated.[9] However, the Commission stated its belief that, notwithstanding the TIB rules, consumers continue to experience significant confusion regarding their bills, largely because of line items. Accordingly, the Commission initiated this *Second Further Notice* to seek ways to address these concerns. In particular, the *Second Further Notice* seeks comment on the following:

- Whether the Commission should differentiate between mandated and non-mandated line-item charges, and if so how to define these charges;
- Whether the Commission should put mandated and other line-item charges in separate sections of the bill;

[6] *Further Notice* ¶71.

[7] Petition for Declaratory Ruling, National Association of State Utility Consumer Advocates' (March 30, 2004) ("NASUCA Petition").

[8] *Id.*

[9] *Truth-In-Billing and Billing Format,* Second Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, (rel. March 18, 2005).

- Whether it is unreasonable to combine federal regulatory charges in a single line item;

- Whether the Commission should require carriers to disclose all charges, including non-mandated line items and mandated surcharges, to consumers at the point of sale; and

- Whether the Commission should preempt state regulation of carrier billing practices.

SBC opposes adoption of the foregoing proposals, with the exception of state preemption, and, in particular, opposes the Commission's proposal to adopt specific billing requirements for line-item charges. The Commission's existing rules already directly speak to the accuracy and clarity required for all billed charges, whether mandated by a governmental entity or not. To the extent individual carriers have ignored these rules, the Commission should exercise its enforcement authority – which it committed to do six years ago – rather than subject the industry as a whole to more onerous billing requirements. Additionally, the Commission should take this opportunity to clarify which commonplace industry descriptions fail to comply with its existing rules. Prescribing additional requirements, where the Commission has not taken any measurable action to enforce its existing rules, is simply unnecessary.

Should the Commission conclude otherwise and impose additional specific billing requirements, SBC would support the following:

(1) Rather than classify government-remitted charges as mandated or non-mandated, the Commission should permit carriers to identify *all* such fees as government charges on customer bills.

(2) Limit any separate section requirement to the foregoing government fees, leaving carriers the flexibility to determine if other billing distinctions are warranted.

(3) Permit carriers to retain the flexibility to combine federal regulatory charges in a single line item, so long as the charges are adequately described.

(4) Require carriers to disclose at the point of sale that surcharges will apply, and provide customers further information upon request.

In addition, and regardless of the Commission's decisions with respect to its other proposals, SBC supports federal preemption of state billing rules. Preemption is the only way to achieve uniformity in billing nationwide. Moreover, state billing rules that conflict with the Commission's rules place the carrier in the untenable position of having to violate one or the other.

II. DISCUSSION

The Commission's second TIB principle – full and non-misleading descriptions of billed charges – is the primary focus of this *Second Further Notice*, as most of the Commission's proposals and requested input seek additional ways to ensure that consumers understand all line-item charges. Currently, all carriers are required to include full, clear, and non-misleading descriptions of all charges in their bills. This means — as the Commission made clear in 1999 — that the descriptions must "convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged."[10] Compliance with this requirement would obviate the need for adoption of most, if not all, of the proposed additional TIB requirements.

The Commission notes that the record reflects that consumers still have significant difficulty in understanding their bills. Indeed, NASUCA and others provided a number of examples of billing descriptions they believe do not comply with the TIB rules. But rather than address these descriptions squarely, the Commission instead proposes additional burdensome TIB rules for all market participants. These proposals – differentiating mandated and non-

[10] *TIB Order*, ¶ 40.

mandated charges, requiring separate billing sections, precluding carriers from combining federal charges in a single line item, and point of sale disclosures – are wholly unnecessary.

Instead of micromanaging carrier billing, the Commission should exercise its enforcement authority against carriers that fail to comply with its existing rules. The Commission stated in the *TIB Order* that it stands ready to take action against carriers that impose unreasonable line-item charges,[11] but in the six years since adoption of the rules, has failed to do so. Where the Commission has proactively enforced its rules in other consumer-related contexts, the number of consumer complaints has decreased. In the slamming context, for example, where Commission enforcement is quite active, the number of slamming complaints filed with the FCC continues to decrease year over year.[12] Similar enforcement action here, where appropriate, would give teeth to the TIB rules, and send a clear message to the industry that the Commission will not tolerate vague and misleading billing descriptions.

In addition, as part of this proceeding, the Commission could provide more specific guidance – even as specific as addressing each individual line-item charge associated with federal regulatory action[13] – regarding the minimum information that must be included in any line-item charge associated with federal regulatory action.[14] By doing so, the Commission could

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[11] *TIB Order* ¶ 57.

[12] For example, the number of slamming complaints filed with the FCC in 2002 was 5249. That number dropped to 4535 in 2004. *See* Quarterly Inquiries and Complaints Reports-Summary of Top Consumer Complaint Subjects, http://www.fcc.gov/cgb/quarter/ .

[13] The number of line-item charges associated with federal regulatory action is limited, and thus could be addressed individually by the Commission in this proceeding.

[14] The Commission has also asked whether it should adopt standardized labels for line-item charges. SBC is concerned that mandated labeling of federal line-item charges could infringe upon carrier's First Amendment rights. Specific guidance may be the better approach here.

promote more uniformity in the use of line-item charges by the industry, while still affording carriers meaningful flexibility in the billing of their services.

For the reasons discussed below, these more flexible alternatives are far preferable to the Commission's proposals.

A. Distinction between Mandated and Non-Mandated Line-Item Charges and Separate Billing Sections.

In the *Second Further Notice*, the Commission proposes to distinguish between mandated and non-mandated line-item charges, and seeks comment on how to define these charges.[15] Further, the Commission proposes to create a separate billing section for mandated charges and seeks comment on whether it should create other billing sections as well.[16]

Neither of these proposals is necessary to ensure that service providers' bills are clear, understandable, and not misleading. The Commission's current rules already prohibit carriers from describing a billed charge in a manner that is misleading. Enforcement of these rules is all that is required.

In any event, distinguishing between government-imposed fees and charges, as the Commission proposes, is meaningless. All government-imposed fees ─ whether required or permitted to be passed through to consumers as separate charges[17] ─ are *incremental* costs of doing business that carriers cannot avoid or decrease by becoming more efficient. As such, carriers must pass these costs through to consumers either explicitly as a line item or implicitly in their rates. Insofar as this proceeding is intended to promote "truth in billing," to ensure that

[15] *Second Further Notice* ¶40.

[16] *Second Further Notice* ¶43.

[17] Connecticut and Oklahoma, for example, require carriers to collect taxes from customers, while Wisconsin and Missouri give carriers the discretion to do so.

consumers know and understand the rates and fees assessed by carriers, carriers should be allowed to identify on their bills all of the costs and fees imposed by the government, irrespective of whether the carrier is required or simply permitted to recover those costs explicitly from their customers. Indeed, to do otherwise would disguise fees and taxes imposed by the government to support various programs as carrier charges, and *mislead* customers to believe that carriers are the driver of these costs, when in fact they are not. Thus, rather than classify government-remitted charges as mandated or non-mandated, the Commission should permit carriers to identify *all* such fees as government charges on customer bills.[18]

Irrespective of whether the Commission requires carriers to distinguish between purportedly "mandated" and "non-mandated" government charges, it should not require carriers to establish separate billing sections for mandated charges, or any other charges. As the Commission held in the *TIB Order*, carriers are in the best position to determine how to format their bills in a manner that best suits their business and customers' needs. As the Commission recognized, billing flexibility encourages carriers to creatively distinguish themselves with simplified bills, to the benefit of both consumers and competition. SBC, for example, in response to informal consumer surveys about its bills, recently shortened its bill to eliminate redundant line items associated with many of its bundled service offerings. SBC's bills are now simpler and easier to understand. A requirement that carriers create multiple billing sections for charges will severely limit carriers' ability to be creative, innovative, and competitively distinguish themselves.

[18] Such charges would include any charge or fee that a carrier is required to remit to a governmental entity or its agent based on services it provides to its customers, including state, county and local taxes, federal excise taxes on communications services, state and local E911 fees, universal service fund charges, state telecommunications relay service charges, and any other charges remitted to governmental entities.

Moreover, requiring carriers to establish separate billing sections for mandated or other charges would be quite costly. In particular, SBC estimates that it would take 10-12 months, at a cost of $1.6 million, to redesign its billing systems to establish such sections. Particularly, given that SBC is already in the process of modifying its billing systems to accommodate the new PIC change charge rules, there is no justification for requiring SBC and other carriers to modify their billing systems yet again to create a separate billing section that would undermine, rather than further, the Commission's objective of promoting truth in billing.

If the Commission, however, requires separate sections, it should only require carriers to create a separate section for government-remitted charges. Otherwise, the Commission would eliminate any meaningful creativity carriers have in designing their bills.

B. Combining Federal Regulatory Charges in a Single Line Item Should Continue to be Permitted.

The Commission asks whether it is unreasonable under Section 201(b) for carriers to combine federal regulatory charges in a single line item.[19] Today carriers can and do combine charges in order to respond to customers' desire for greater simplicity. For example, in the bundled services context, the Commission permits multiple carriers to bundle their services and offer that bundle at a single price. Subscribers would expect no less for surcharges. Thus, carriers should have the flexibility to bundle like surcharges into a single line item.[20] Such action would in no way be unreasonable, so long as the description of the included charges is

[19] *Second Further Notice* ¶48.

[20] For example, where SBC offers a bundle that includes local, long-distance and wireless services (three separate carriers, i.e. SBC Telco, SBC Long Distance and Cingular bundle), SBC should be permitted to include a single line-item charge for universal service fund ("USF") recovery, rather than including three separate USF line items for each of the three carriers in the bundle.

full, accurate and non-misleading. Only line items that run afoul of this standard should be considered unreasonable under Section 201(b).

C. Point of Sale Disclosure Rules are Unnecessary and Unworkable.

In the *Second Further Notice*, the Commission proposes that carriers disclose, at the point of sale, all ancillary charges for telecommunications services, including any non-mandated line items and a reasonable estimate of mandated charges.[21] SBC strongly opposes the proposal. SBC believes such a requirement would prove unworkable and time consuming for carriers and customers alike.

It is SBC's practice to advise all customers at the point of sale that surcharges and taxes will apply. If asked for greater detail, SBC gives the customer an estimate of those charges. In SBC's experience, most customers do not ask for a full itemization. Customers already consider sales calls too lengthy and are anxious to conclude the sale as quickly as possible and get back to their lives. SBC's ability to do this is already hampered by the number of regulatory disclosures that SBC has to make. For example, CPNI disclosures and third party verifications are necessary for certain sales calls, which significantly lengthens the call. A *requirement* that carriers provide all customers with a breakdown or itemization of all surcharges would only further lengthen the call.

Telecommunications purchases are no different than many other consumer purchases. Consumers often make purchases without having a detailed breakdown of the applicable taxes and surcharges. Customers should have access to such detailed information only if *they* so choose.

[21] *Second Further Notice* ¶56.

If the Commission must act here, the better approach would be to require carriers to advise customers that surcharges will be added to their services and to provide more detailed information regarding taxes and surcharges upon request.[22] SBC currently does this today. This way, the customer retains some control over the length of the sales contact and the information they want.

D. The Commission Should Preempt State Regulation of Carrier Billing Practices.

The Commission seeks comment on whether it should preempt the states from regulating carrier billing practices, thus reversing its prior holding that states may enact and enforce more specific TIB rules than imposed by the FCC.[23] SBC urges the Commission to preempt all state regulation of carrier billing practices.[24]

In determining whether preemption is warranted, the courts have typically employed a three-step analysis: (1) is the subject matter purely intrastate in nature or jurisdictionally mixed; (2) if the matter is jurisdictionally mixed, is there any feasible way, based on economics or operational practicality, to allow for state and federal regulation over the matter; and (3) if there is inseverability between state and federal, would the state regulation negate, thwart or impede

[22] In general, SBC is able to provide its customers the exact amount for one-time surcharges. For all other taxes and fees, which may vary from month-to-month (e.g. USF) or by locale (e.g. utility taxes), SBC advises the customer that it cannot provide an exact amount, but provides the customer an estimate of these charges.

[23] *Second Further Notice* ¶¶ 50-51.

[24] Preemption here would not affect a state's ability to levy additional fees, mandated or not, on carriers. It would preclude a state's ability to mandate billing formats and billing descriptions for any billed charges.

achievement of the federal goal.[25] Each of these factors are met here, warranting FCC preemption.

Carrier billing practices transcend jurisdictional boundaries. Most carriers offer both intrastate and interstate services, and bill for these charges in a single bill, using the same billing systems and billing format. Even where a carrier operates solely as an intrastate provider, it often serves as a billing agent for interstate providers, thereby using its intrastate billing systems to include those carriers' charges on its bill. Thus any state regulation of a carrier's billing practices for intrastate services necessarily will impact the carrier's billing of interstate services – an area where the Commission unquestionably has jurisdiction to regulate. Given the jurisdictionally mixed nature of carrier bills, the best approach would be to ensure that any required billing practices occur solely at the federal level.

In SBC's experience, it would be neither practical nor feasible for a carrier to support multiple billing formats, particularly where that carrier operates in numerous states. The Commission recognized in the *Second Further Notice* that state-by-state regulation of billing practices in the wireless context would increase those carriers' costs in providing CMRS which would translate into higher CMRS rates for consumers.[26] The same holds true for wireline carriers. SBC operates as a LEC in 38 states and the District of Columbia and as a long-distance provider in all 50 states. While SBC today does not use a single billing system across its serving territories, it does by region. It would be impractical for SBC to modify its existing billing system within a given region to accommodate federal billing requirements and multiple, varying

[25] *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

[26] *Second Further Notice* ¶52.

state requirements in that region.[27] While the states may argue that any additional state billing requirements likely would be minor, as any billing expert knows, whether the billing change required is small or huge, the time, resources and cost necessary to implement the change is significant.

Each and every billing requirement necessitates a change in the carrier's billing system, and those changes are complex, expensive and time-consuming. Not only must the actual billing systems be changed, but the systems that feed into the billing systems must be modified to accommodate the change.

Billing changes also significantly impact a carrier's overall space limitations. As the Commission is aware, space availability on carrier bills is extremely limited.[29] SBC has had to devise many creative solutions to fit all of its charges, descriptions and required consumer disclosures within the space limitations of its billing software. And this is just to ensure compliance with the FCC's rules. When states enact additional billing requirements, such as multiple sections, additional consumer disclosures, specific line-item descriptions, labels, etc., SBC is forced to make room for each of these additions, which necessarily has an impact on the existing format of its bills. Practically speaking, SBC would have to shorten or modify its existing bill in a manner that satisfies its existing billing obligations, state requirements, and

[27] For example, in SBC's Southwest region, SBC uses a single billing system for SBC Missouri, SBC Oklahoma, SBC Kansas, SBC Arkansas and SBC Texas. If Texas were to require SBC to divide its bill into two sections, and Oklahoma were to require SBC to divide its bill into four sections, SBC would have to make extensive, costly changes to its existing billing system to accommodate these requirements.

[29] See SBC's Reply Comments to the *Further Notice*, filed July 16, 1999, wherein SBC explained that many billing systems have limitations regarding the number of characters that can be printed on a bill in conjunction with a specific charge.

existing space limitations.[30] Imagine a carrier having to undergo this or a similar process each and every time a state enacts a new billing requirement. Higher carrier costs and higher rates for consumers likely would be the end result.

Further, multiple billing formats could frustrate and confuse consumers. A significant portion of SBC's subscriber base operates in multiple states. Today, SBC offers many of these customers the option of receiving a single bill for all services purchased in a SBC region – an option well received and utilized in particular by SBC's larger customers. If multiple state billing requirements are allowed, SBC ultimately might have to discontinue this offering. Additionally, a customer receiving multiple SBC bills within a region, each with a different format, could be easily confused. Customers are accustomed to seeing charges and disclosures in certain places on their bill. If there is a wide variance in the format, consumers may experience confusion in locating their charges, explanations thereof, and disclosures.

Finally, state billing requirements can easily conflict with the Commission's rules, placing carriers in the position of having to violate one or the other. For example, in California, Public Utilities Code section 786 requires SBC to denote any charge imposed in response to a FCC rule, regulation or tariff, whether mandated by the FCC or not, as a charge "imposed by action of the Federal Communications Commission." Such charges include, for example, federally tariffed charges that are neither mandated by the Commission nor are remitted to any governmental agency (e.g. EUCL charge).

[30] In particular, SBC would have to conduct extensive testing to ensure that (1) the billing system and all other systems that feed into that system work properly, and (2) the new bill format adequately conveys all the requisite information in a simple, easily understandable manner for the consumer. SBC recently supplied the Wireline Competition Bureau detailed information on the types of billing changes it would need to make to comply with the new PIC Change Charge requirements. Many of the same tasks are repeated for each and every billing change. *See Ex parte,* Letter from Toni Acton, SBC, to Marlene Dortch, CC Docket No.02-53 (March 31, 2005).

Uniform billing practices would resolve all these concerns. The Commission is fully equipped to evaluate consumer needs and balance those interests against the costs and burdens any additional billing requirements will have on carriers, thereby obviating any need for the states to regulate in this area. SBC would not oppose the Commission implementing a process to allow the States to administer the FCC's TIB rules – similar to the existing state slamming administration process described in footnote 52 of the *Second Further Notice* – so long as the States are preempted from enforcing additional state billing practices.

III. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Commission refrain from adopting additional TIB requirements, with the exception of state preemption, and instead enforce its existing rules. However, if the Commission determines that additional TIB requirements are warranted, SBC requests that the Commission adopt its proposals as set forth herein.

Respectfully submitted,

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